IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

CRL.A.No. 1074 of 1998(C)

ST.2425/1995 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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APPELLANT/COMPLAINANT:

VISWANATHAN,S/O.VELLAKUTTY,KUNNISSERY VEEDU,
VADAKKENCHERY AMSOM, ALATHUR, PALAKKAD DISTRICT.

BY ADV. SMT.K.MEERA

RESPONDENT/ACCUSED:

JOHNY PETER, S/O.PETER,PAZHAMBALACODE AMSOM,
ALATHUR TALUK,NOW RESIDING AT NEAR VADAKKENCHERY
PETROL PUMP WORKING AT NODO HOTEL.

BY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

CRL.APPEAL.NO.1074 OF 1998 ()

Dated this the 29th day of November, 2006

J U D G M E N T

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act contending that respondents herein borrowed a sum of Rs.40,000/- and in discharge of the above obligation, Ext.P1 cheque was issued by the respondent. The above cheque was dishonored for insufficiency of funds. The court below dismissed the complaint and acquitted the accused only on the sole reason that in the notice apart from the cheque amount, interest and costs were also demanded. According to the trial court in view of the decision reported in **Raj v. Rajan (1997 (1) K.L.T. 302)** such a notice is defective. The above decision was overruled in **Kunjan Panicker v. Christudas (1997 (2) K.L.T. 539)**. In **Suman Sethi v. Ajay K.Churiwal ((2000) 2 S.C.C. 380)** Apex Court held that apart from the cheque amount, merely because interest and costs were also demanded, notice will not become insufficient for complying with the statutory formalities under Section 138

of the N.I. Act. In view of the above, I am of the view that the matter should be reconsidered by the trial court. Hence appeal is allowed by way of remand. Complainant is directed to appear before the court on 9.1.2007. Despite repeated notice respondent was evading the notice issued by this Court. Registered notice sent to the appellant was found accepted by the accused. Since appellant did not enter appearance, before hearing the matter, registered notice was also sent to his advocate appeared in the trial court. Trial court should give intimation regarding the date of posting to the counsel appearing for the accused in that court.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY, J.

CRL.A.NO.1074 OF 1998 ()

J U D G M E N T

29th November, 2006